

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
Implementation of Section 621(a)(1) of)
the Cable Communications Policy Act of 1984)
as amended by the Cable Television Consumer)
Protection and Competition Act of 1992)

MB Docket No. 05-311

**COMMENTS OF ADA TOWNSHIP, ALLENDALE CHARTER TOWNSHIP, CITY OF
CADILLAC, HOLLAND TOWNSHIP, CITY OF HUDSONVILLE, HURON CHARTER
TOWNSHIP, CITY OF LIVONIA, MILTON TOWNSHIP, CITY OF SOUTHFIELD,
CITY OF SWARTZ CREEK, VIENNA CHARTER TOWNSHIP, CITY OF WARREN,
CITY OF WESTLAND, WHITEWATER TOWNSHIP, AND ZEELAND TOWNSHIP;
AND THE PENNSYLVANIA STATE ASSOCIATION OF BOROUGHES**

February 13, 2006

John W. Pestle
Timothy J. Lundgren
VARNUM, RIDDERING, SCHMIDT & HOWLETT LLP
333 Bridge Street, N.W.
Grand Rapids, MI 49504
Their Attorneys

TABLE OF CONTENTS

	Page
SUMMARY	3
COMMISSION AUTHORITY AND SECTIONS 621(a)(1) & 635(a).....	4
LOCAL CABLE FRANCHISING IN GENERAL.....	7
Build-Out and Service Requirements: Making Service Available.....	7
Use of Public Property.....	9
Local Management of the Rights of Way	11
Meeting Local Needs.....	13
Determining Local Needs	15
Expediting the Franchising Process	16
THE MICHIGAN MUNICIPALITIES' EXPERIENCES	17
City of Garden City, Michigan	17
Allendale Charter Township, Michigan	20
Holland Charter Township, Michigan.....	21
Zeeland Charter Township, Michigan.....	22
Ada Township, Michigan	24
City of Westland, Michigan	26

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
Implementation of Section 621(a)(1) of)	
the Cable Communications Policy Act of 1984)	MB Docket No. 05-311
as amended by the Cable Television Consumer)	
Protection and Competition Act of 1992)	

COMMENTS OF PENNSYLVANIA AND MICHIGAN MUNICIPALITIES

These Comments are filed by Varnum, Riddering, Schmidt & HowlettLLP ("Varnum") on behalf of the Pennsylvania State Association of Boroughs and the following Michigan municipalities (collectively, the "Pennsylvania and Michigan Municipalities" or "Municipalities"): Ada Township, Allendale Charter Township, City of Cadillac, Holland Township, City of Hudsonville, Huron Charter Township, City of Livonia, Milton Township, City of Southfield, City of Swartz Creek, Vienna Charter Township, City of Warren, City of Westland, Whitewater Township, and Zeeland Township.

SUMMARY

Because the local franchising process for cable franchising is established by the Federal Cable Act, and provides the exclusive means for franchising and renewal, the Commission is without authority to establish a new system of franchising which would substantially alter or bypass the local franchising process prescribed by statute. The Federal Cable Act also requires that local franchising authorities consider the cable-related needs and interests of their communities when issuing cable franchises. Because cable providers use the public's rights of way to conduct their business, Congress has determined that they too must acknowledge and

respect local needs and interests. Therefore, locally tailored franchise provisions are essential to the Congressional intent for franchising.

It has been the experience of the Pennsylvania and Michigan Municipalities that there is no real incidence of competitive cable providers being denied franchises where they have applied for them. In fact, the Municipalities are eager for competition, and seek to encourage new entrants into the cable market. Build-out and service requirements have not posed an obstacle to deployment of cable systems either for the incumbent providers, nor for the competitive providers franchised by the Municipalities, but such provisions are essential for the Municipalities to ensure that service is provided on a non-discriminatory basis.

The Comments in the section immediately below provide a discussion of the Commission's authority to create rules that substantively affect the local franchising process. These are followed by general information about the cable franchising process based on the experiences of the Pennsylvania and Michigan Municipalities. The final section provides comments on the individual experiences of the Municipalities with cable franchising in general and competitive franchises in particular.

COMMISSION AUTHORITY AND SECTIONS 621(a)(1) & 635(a)

This proposed rulemaking is based on the requirement of Section 621(a)(1) of the Communications Act of 1934, as amended, that "a franchising authority . . . may not unreasonably refuse to award an additional competitive franchise." Therefore, any action by the Commission must be predicated on a demonstration that there is some significant instance of "unreasonable refusal" of competitive franchises that the Commission must act to correct. In fact, there has been no such demonstration. As the experiences of the Municipalities provided in

these comments demonstrate, local franchising authorities ("LFAs") work hard to meet the needs of any competitive provider who demonstrates a sincere interest in providing cable service in their community, and have awarded franchises in all cases when they have been approached by a competitive provider (except where the provider encountered financial difficulties or decided against further expansion). The Pennsylvania and Michigan Municipalities have had experience, as discussed herein, with granting competitive cable franchises for phone companies. When phone companies have requested local cable franchises, such franchises have been granted on terms agreed to by the phone company and the municipality. Thus, there has not been a "denial" under the statute -- let alone an "unreasonable denial" -- which would provide a basis for the courts to act under the Cable Act.

The Commission thus lacks the authority to modify the local cable franchising process that Congress put into place with the Cable Act. It is worth noting that both houses of Congress are currently deliberating over the continued applicability of the franchising process as set forth in the Cable Act, given the changes in telecommunications technology that have taken place in the last decade. It is not the role of an administrative agency to move ahead of the expressed will and intent of Congress. The Commission should await the Congressional determination of these issues.

Under Federal law, franchises can only be granted by local units of government, and on terms which are determined at the local level to meet local needs. Prior to the 1984 Cable Act, this Commission set rules limiting local franchising authority. In the 1984 Act, subsequently affirmed in 1992 and 1996 amendments, Congress removed from the Commission the rule-making authority to establish substantive provisions for local franchises. As a check on local authority, Congress instituted a remedy in the courts on a case-by-case basis for cable operators

who believe they have been unreasonably refused a cable franchise. *See* Cable Act, Section 635. This Commission cannot undo the Congressional determination about where the power to address violations of local franchising authority should reside by arrogating to itself again the authority that Congress removed in 1984.

In the NPRM, the Commission begins with a statutory provision forbidding a certain kind of local franchising authority action, and from that purports to derive authority for itself, not just against particular franchising authorities who have been shown to have acted in violation of the statute, but to establish rules for all franchising authorities, even in the absence of any demonstration of statutory violation. From that position of self-created authority, the Commission then proposes to further extend its reach into the franchising process by making rules not only about what an "unreasonable denial" might be, but rules which affect a whole "range of behavior," and which interfere with the established local franchising process that Congress affirmed over twenty years ago. As is self-evident, the Commission lacks the authority to do this.

The Commission is proposing to change the existing franchising process for a whole class of cable providers, *i.e.*, those who have traditionally offered telephone service. A Commission determination that this class of cable providers need not follow the Congressionally established process for cable franchising because of potential or hypothetical violations of Section 621(a)(1) would be to go far beyond what the Cable Act states (*i.e.*, protection by the courts on a case-by-case basis from unreasonable denials). This is particularly the case where the phone companies have not even applied for a local franchise, or , as in the case of some of the Michigan Municipalities herein, cable franchise applications from phone companies have been timely granted. The Commission is attempting to create an alternative franchising

procedure to that set forth by Congress in the Cable Act. The Commission simply lacks the authority to rewrite the statute in this fashion.

Congress has already made a policy decision about how to deal with unreasonable denials of franchises. Those cable providers who believe that they have been unreasonably denied a competitive franchise have a statutorily established right to have their complaint addressed by the courts under Section 635(a) of the Communications Act. This provision states that:

Any cable operator adversely affected by any final determination made by a franchising authority under section 541(a)(1) [*i.e.*, §621(a)(1)], 545, or 546 of this title may commence an action within 120 days after receiving notice of such determination, which may be brought in-- (1) the district court of the United States for any judicial district in which the cable system is located; or (2) in any State court of general jurisdiction having jurisdiction over the parties.

47 USC § 555(a). There is no record suggesting that this provision has been ineffective in protecting the rights of cable operators. There is almost no case law on the subject of franchising authorities unreasonably refusing to award competitive franchises (because they have, in fact, been awarded and not denied), which strongly suggests that this is not a problem area requiring the intervention of the Commission. Therefore, the policies established by Congress for the process of obtaining a franchise and for addressing disputes arising from that process appear to be functioning well. No new rules from the Commission modifying or addressing the franchising process are called for.

LOCAL CABLE FRANCHISING IN GENERAL

Build-out and Service Requirements: Making Service Available

New entrants to the cable market typically negotiate some kind of phased-in build-out requirements that address the needs of the community and also meet the company's business needs. Once initial build-out is accomplished, franchises often contain service requirements that

are usually based on universal service (for more densely populated areas) or the density of homes per mile (for less dense areas). For example, franchises with the Michigan Municipalities contain service provisions requiring the incumbent provider to provide universal service or else containing a density requirement usually in the 20 to 25 homes per mile range, while new providers' franchises typically either have universal service requirements or else have density requirements in the 20 to 30 homes per mile range.

As a result of this combination of build-out and service requirements, cable operators have historically been able to build out their systems successfully and operate them profitably. The build-out and service requirements have also made high-speed Internet service widely available. For instance, most of the residents of the Michigan Municipalities have broadband cable modem service available to them from their franchised cable operator because of the build-out and service requirements present in the operators' franchises. Such service is far more available than the DSL-based service of the phone companies, just for this reason.

Appropriate and reasonable build-out and service requirements ensure that there is a simple, objective, easily administered test of economic feasibility as to where cable service has to be available, such as those given above. Having a clear test helps to ensure that the cable company's facilities are extended into all neighborhoods meeting this test, and that service is offered to all residents in such neighborhoods, regardless of race, age, income, or other extraneous factors.

To protect our residents against discrimination of all kinds, the Michigan Municipalities' franchises couple (1) a simple, objective test, tailored to their community, as to who is entitled to service (either universal service or homes per mile), with (2) broad anti-discrimination provisions prohibiting both incumbent and competitive providers from discriminating on the

basis of race, color, creed, religion, ancestry, national origin, sex, disability, age, marital status, location within municipality, or status with regard to public assistance, and in addition preventing discrimination against any group of actual or potential subscribers because of the income level or other demographics of the local area in which such group may be located.

Having broad anti-discrimination language, while important in principle, does not adequately prevent discrimination. It must be coupled with a clear, objective measure for where cable service must be provided for it to be effective. Otherwise it is too difficult to enforce the anti-discrimination language and distinguish when non-provision of service is due to acceptable economic factors from when it is driven by unacceptable discriminatory practices. The two provisions are thus inextricably linked and cannot be separated.

A simple, objective and easily administered test is also important because it clearly establishes what the community's expectations are, and it is easy for the cable provider to see where extensions will be necessary and to make the necessary plans to accomplish them. However, the test must be locally tailored so as to take into account local geography, demographics, seasonal residences, historical areas, and other factors which affect population density and ability to provide service. A one-size fits all test applied nationally, or even across a whole state, would not work.

Use of Public Property

The Pennsylvania and Michigan Municipalities want and welcome new entrants into the cable service marketplace in their communities. They want competition in cable. They have set, and stand ready to set, reasonable and realistic schedules for new providers providing service to their residents. The Municipalities and communities like them across the country have a long

history of franchising cable providers. Decades of experience have equipped LFAs to understand how changing technologies and changing business climates can affect the ability of a cable operator to extend its services throughout a community. The Municipalities are eager to see further competition in their communities with regard to cable services and are prepared to discuss reasonable time frames for roll-out of services and facilities with new entrants. However, the Municipalities cannot abdicate their responsibilities to their residents to ensure that such services, which depend on public properties to provide service, are ultimately extended as broadly and fairly as is economically reasonable. Therefore, while new entrants may prefer to avoid having to address build-out and service requirements, it is the duty of local officials to address such issues, and it is the responsibility of local cable operators (new or existing) to serve the public generally in return for using the public's rights of way.

For these reasons, central to any discussion of the necessity for build-out and service requirements should be the recognition that cable providers operate their business through the public rights of way, which are public property and are maintained using public funds. Because the rights of way belong to the public generally, they cannot be used in a discriminatory fashion. It is therefore the responsibility of local government, as stewards of the local rights of way, to make sure that they are used in a nondiscriminatory way, and that public property is used to provide service wherever there is sufficient population density, without regard to age, sex, income, race, or other extraneous factors. It is not acceptable or legal for a monopolist or duopolist using hundreds of miles of public property to provide service to have complete discretion to pick and choose who to serve. For these and related reasons, such build-out requirements are used with all other utility-type services. Having a build-out requirement comparable to that of a cable company poses no risk to companies such as SBC/AT&T which is

using a technology that allows it to provide service at less than 20% of the cost of conventional cable companies. *See SBC Project Lightspeed, SBC Communications Conference Call November 11, 2004, SBC Investor Update, page 22.*

Complying with reasonable build-out and service requirements is not a barrier to entry. The history of cable franchising has shown that it was not a barrier to the cable operators -- both initial and competitive providers -- currently providing service in the Pennsylvania and Michigan Municipalities, and it will not be a barrier to entry to any new providers of similar services. They can and should expect to receive reasonable, phased build-out requirements and service requirements that are economically reasonable.

It is notable that in franchising phone companies entering the cable business from 1995 to 2005, the Pennsylvania and Michigan Municipalities did not receive objections to the concept of build-out requirements. The only issue raised was allowing enough time for the build-out to occur, and this was individually negotiated based on business and community needs, and typically ran to two to three years.

Local Management of the Rights of Way

The Commission has inquired about the need for local franchising for new cable service providers who already have some access to the rights of way in order to provide telephone or broadband services. While it may be true that such new entrants to the cable market may already have some facilities in the public rights of way, it is nevertheless also true that the increased service offerings that come with providing cable service require increased or updated facilities in the rights of way. Thus, we have seen nationally that these new providers are adding some (in the case of companies using technologies similar to those of SBC/AT&T) or all (in the case of

Verizon) new facilities in order to provide service. This means an increased burden on the public ways and increased frequency of pavement cuts and right-of-way disruptions affecting other users.

Thus, even an existing user of the rights of way, who now proposes to offer cable services, will pose an additional burden on the rights of way. How much of an additional burden will be placed on the rights of way depends upon the plans of the local provider and the state of its facilities, as well as the condition of the local rights of way and the difficulties inherent in accessing it (the presence of historic districts, the type and age of the road surfaces, the need for undergrounding lines in particular areas, etc.). All of these are local factors that vary from location to location, and so cannot be legislated effectively ahead of time at either the state or federal level. This is, in part, why control over the rights of way was affirmed as a local government concern in the Cable Act.

Aside from the practical issues associated with increased and different uses of the rights of way by new cable providers, there also are questions of law and equity involved in determining how existing users may make new or increased uses of the rights of way. Existing users of the rights of way who are seeking to offer new services without additional approvals are like residents in a building who have a residential lease and now wish to begin operating a business out of their apartments without seeking approval of the building owner or the local government. After all, they reason, they already have permission to be there as residents, so why can't they also operate there as businesses under the existing lease agreement? Why should they need to get the landlord's permission, or zoning approval or a business license from the local government? While it might be expedient for them to forego these regulatory requirements, and while the Pennsylvania and Michigan Municipalities value new businesses starting up in their

communities, they nevertheless require them to go through the established process because that process ensures that services can be provided in a manner such that everyone is protected: the neighbors, the customers, the local community, and even the business itself. Requiring a franchise for cable service, even for telecommunications providers who are already in the rights of way, makes sense for the same reasons. And it is required legally, because the Federal government cannot expand the rights of a tenant, either by extending the term of a lease or further burdening the underlying estate by expanding the nature of the use.

Similar comparisons can be drawn with persons holding radio licenses from the Commission. They may claim that because they have an antenna and tower and permission to use frequency X that there is no additional burden or reason for them not to use frequency Y. But in each case, the regulating entity – local governments or this Commission – have licensing and regulatory procedures to make sure, for example, that an expansion of use does not affect other users of the broadcast spectrum (or public rights of way), that safety regulations are complied with and that applicable public service/public benefit requirements are complied with. So even as a radio service license for a taxicab service does not allow the licensee to engage in commercial broadcasting, permission to use the rights of way for phone lines does not allow the permittee to provide electric or cable service through those rights of way.

Meeting Local Needs

In return for using the public's property in their business operations, cable providers have historically compensated the public in a variety of ways; for instance, through the provision of a local emergency alert system; through providing public, educational, and governmental ("PEG") channels; by providing funding, training, and/or equipment for the PEG channels; or through

provision of an institutional network ("I-net") which connects municipal buildings and facilities, making municipal telecommunications more efficient and inexpensive.

Such in-kind and monetary contributions represent one way in which the cable provider repays the community for the privilege of using the public rights of way for its business operations. But even then, some or all of these costs may be passed on by the cable provider to subscribers, so that the business alone does not shoulder these costs. This method of cost-sharing is reasonable, as then the subscribers who gain the most from having these services available to them aid in bearing the cost of the services. The local franchising process thereby provides an equitable arrangement whereby local franchising authorities represent local subscribers in determining the level of access they wish to have to the facilities of the cable system, and balancing that against what subscribers are willing to pay for.

Alternative systems would shift the costs in less equitable ways. For instance, requiring the municipality to fund PEG or other cable-related services out of their general funds would result in municipal taxpayers as a whole subsidizing cable subscribers, who alone receive the benefits of PEG (in other words, non-cable subscribers would be paying for PEG channels they cannot view). Similarly, allowing new entrants into the cable services market to bypass the local franchising process, thereby bypassing local determinations about the need for PEG availability and support, would be inequitable. It would be both competitively unfair to existing cable service providers and would harm local communities and their residents by allowing new entrants into the cable services market to escape the obligations of public service undertaken by incumbent cable providers in return for using the public rights of way to provide cable services. The current system is a more equitable arrangement, and allows the local franchising authority to

tailor the PEG and other requirements to the community's needs and interests as the Cable Act requires.

Determining Local Needs

The determination of local needs is a crucial part of the franchising process. Congress determined that one of the purposes of the Cable Act was to "establish franchise procedures and standards which encourage the growth and development of cable systems and which assure that cable systems are responsive to the needs and interests of the local community." 47 USC § 521(2). This is accomplished, in part, during the renewal process, when a determination of the community's cable-related needs and interests is made by the local franchising authority. 47 USC § 546(a)(1). Congress has made the renewal process in the Cable Act the exclusive method for renewing franchises, and LFAs and the Commission must be sure that in franchising competing providers the intentions of Congress are not violated.

As they discuss below, the Pennsylvania and Michigan Municipalities have had the experience of new cable providers requesting a franchise near or during the renewal period for the incumbent operator. Because an incumbent franchisee in renewal negotiations will naturally look to a recently granted competitive franchise's requirements as an expression of the community's needs, a community in this situation must consider its needs and the impact of the franchise terms it grants to a new provider on the incumbent's renewal negotiations. While this may slow the process of granting a competitive franchise, as some of the Municipalities' individual experiences below suggest, a determination of community needs is nevertheless an indispensable part of the statutory process for franchise grants and renewals.

Expediting the Franchising Process

The Commission's questions about unreasonable barriers to entry appear to turn to a great extent on the speed with which a cable provider can obtain a franchise from a LFA. One of the ways in which cable providers and LFAs can and have worked together to expedite obtaining or renewing local franchises is to negotiate with a number of LFAs simultaneously as a group -- either a formal group all covered by a single franchise, or an informal group where each gets its own franchise based on a jointly negotiated base franchise.

Several of the Municipalities have approached franchising negotiations in this manner. For instance, a number of the Municipalities (Allendale Township, City of Cadillac, Holland Township, City of Hudsonville, Milton Township, Whitewater Township, and Zeeland Township) participated in an informal joint franchise negotiation of about 60 Michigan communities with Charter Communications, which culminated in all of them granting a renewed franchise to Charter in 2004. The communities had done much the same with the renewal of Charter's predecessor in 1994. While the 60 communities did not formally band together to obtain their franchises in each case, they were represented by the same counsel, who negotiated the general form of the franchise for all of the communities simultaneously. This general form was then tailored to each of the nearly 60 communities.

Items of individual local concern, such the number of channels on the system, upgrades/rebuilds of the system, number of PEG channels, provision of equipment for the PEG channels, financial support for PEG channels, the amount of the franchise fee, resolution of an audit of past franchise fee payments, the local approval process, bill payment locations, insurance, bonds, cable company contact information (general manager, technical issues, customer service, and so on) specific to the municipality in question, and school and municipal

buildings to receive complimentary service were then addressed specifically in each franchise. In the end, each franchise was tailored to that community's needs, but the entire process resulted in nearly 60 franchises for the company as the result of what amounted to one set of negotiations.

This type of joint effort, which Michigan municipalities have used both with incumbent providers and with phone companies (such as Ameritech New Media) entering the cable business, is one way in which municipalities are exploring real world methods to expedite cable franchising.

Another way in which a competitive cable provider seeking a franchise can expedite the process is to take advantage of the incumbent's franchise by expressing a willingness to adopt the incumbent's franchise with whatever limited changes are necessary to tailor it to the competitive provider's business needs. Holland Township and Zeeland Township both have successfully used incumbents' cable franchises as the basis for negotiations with new providers, thus expediting the process of reaching agreement on the necessary terms.

The general principles discussed above are illustrated in the experiences of the various communities related below.

THE MICHIGAN MUNICIPALITIES' EXPERIENCES

City of Garden City, Michigan

The City of Garden City is located in the Metropolitan Detroit area and has a population of approximately 30,000 people. After a proposal process it selected and awarded its original cable franchise to MacLean-Hunter Cable TV in 1982.

The City was approached by Ameritech New Media (cable arm of the phone company Ameritech) in 1995 about the opportunity to be one of the first Michigan communities to issue

Ameritech New Media a cable franchise and receive their cable service in competition with the incumbent cable company. The City entered into negotiations with Ameritech New Media in the summer or fall of 1995 and completed the franchise in early 1996, for a total negotiation and franchising period of approximately six months. The franchise took somewhat longer than expected because this was one of the first franchises negotiated by Ameritech New Media and it and its staff were to some degree still learning the ropes and developing answers to many of the questions and policy issues that can arise during the franchising process. Another factor which delayed negotiations was that in the midst of the negotiation period the City Attorney (who was one of the key negotiators for the City) suffered a heart attack and shortly thereafter died.

While the City was negotiating with Ameritech New Media, the original franchise with MacLean-Hunter (at that point transferred to Comcast) was close to expiring. So as to not jeopardize the results of a needs assessment and the formal renewal process, the City was careful to negotiate terms with Ameritech New Media which would fulfill the City's future cable-related needs in a renewal with Comcast.

Like many other cities served by Ameritech New Media, Garden City was very concerned when in 1998 SBC proposed to buy Ameritech, due to SBC's historical track record of disliking cable systems and shutting down the cable arms of telephone companies which it purchased (such as those of Pacific Bell and Southern New England Telephone). Ameritech New Media's franchise with the City provided that there could be no change of control of Ameritech New Media without the City's approval in advance. The City negotiated hard and worked with other cities, finally approving the transfer only upon getting written commitments from Ameritech Corporation that its cable subsidiary would continue in operation after the sale to SBC and would not be shut down.

The negotiations on this point were protracted and (the City was told) went to the highest levels in 1998 at SBC and Ameritech. This situation illustrates the importance of having strong transfer of control language in franchises, not only to prevent sale of a cable company to someone who will perform less well than the prior operator, but also to prevent sale to a competing operator in a city, thereby eliminating the benefits of competition. Congress has expressly allowed cities to deny transfer requests where an "overbuilder" would be bought out by the incumbent cable company, or vice versa. *See*, Federal Cable Act § 613(d).

Ameritech New Media ultimately obtained franchises from 42 communities in the Detroit Metro area. After being purchased by SBC it did not negotiate or sign any new franchises, and, in fact, withdrew from ongoing franchise negotiations in other communities. If Ameritech/SBC had continued to negotiate cable franchises, it could have obtained them for essentially the whole State of Michigan then served by cable by the year 2000. The City was told that the limiting factor on Ameritech New Media's growth was how rapidly the cable systems could be built (not the lack of franchises).

Many cities want competition in cable. Ameritech New Media told Garden City (as it told many others) that if its requests in the franchising process were too great, then Ameritech New Media would bypass them for the time being and build first elsewhere. This approach put pressure on Garden City and other municipalities to keep its requests focused and reasonable, so as to expedite the issuance of a franchise and thereby obtain the benefits of cable competition for Garden City. The Garden City franchise with Ameritech New Media provides for (among other things) a 5% franchise fee, service requirements that ensure non-discriminatory provision of service, 4 PEG channels, an additional 1% fee to support the PEG channels, free service to

municipal and school buildings, and an I-NET connecting the principal municipal buildings in the City.

Allendale Charter Township, Michigan

Allendale Charter Township has a population of approximately 13,000 and is located in Western Michigan. Its current cable operator, after several transfers, is Charter Communications. Allendale worked on a joint basis informally with approximately 60 other communities served by Charter to renew that franchise in 2004. This effort was very successful (and has been used by Allendale and many of the other communities before) in getting a generally uniform form of franchise regionally, which is tailored to meet the individual needs of each community. From the cable company's perspective, this approach provided a renewal on generally common terms for much of its subscriber base in Michigan quite quickly.

While the Township was negotiating the cable franchise renewal with Charter Communications, it was approached by Allendale Telephone Company, the independent phone company serving the Township, about obtaining a cable franchise.

Allendale, like other communities, wants competition in cable service. In order not to jeopardize its ongoing renewal with Charter, it awarded a franchise to Allendale on essentially the same terms and conditions on which it was then renewing with Charter Communications. This process took about approximately six months; however, much of that time period was spent waiting for responses from attorneys for the telephone company. The Township worked to meet the timing needs of the phone company which wished to have a cable franchise in place prior to students returning for class at Grand Valley State University, whose main campus is located within the Township. The Township was able to grant a franchise to meet this need.

Allendale Charter Township's franchise with Allendale Telephone requires it to provide service to all residents of the Township and gives the company three years to meet this standard, has broad provisions prohibiting discrimination in cable service, requires free cable service to school and township buildings, provides two channels for use by the Township and area schools, provides for funding of up to 20¢ per customer per month to assist these channels, and has a franchise fee of 5% of gross revenues. It also has detailed information about whom at Allendale Telephone the Township should contact for specific types of problems.

Later in 2004, the Township completed its cable franchise renewal with Charter on essentially the same terms. Awarding the franchise to Allendale Telephone on such terms prevented the Township and its residents from being harmed in the renewal with Charter by allowing Charter to argue that the Township had already determined its future cable related needs where terms were different from those under discussion with Charter.

Holland Charter Township, Michigan

Holland Charter Township has a population of about approximately 29,000 and is located on the west side of the state of Michigan near the City of Holland, Michigan.

The Township first granted a cable franchise to a local cable company in the 1970s or 1980s. This franchise has been transferred and renewed several times; most recently it was renewed in 2004 with Charter Communications. In this renewal, Holland Charter Township worked jointly with many other communities served by Charter, as Allendale Township has described above.

In 2005, the Township was approached by a local telecommunications company (T2 Communications) about obtaining a cable franchise to serve new residential development within

the Township. T2 also intended to provide cable service via a DSL type connection outside the development if this proved to be technically feasible.

The Township negotiated and awarded a franchise to T2 in approximately two to three months. The franchise is basically identical to that renewed with Charter Communications shortly before, which expedited matters. T2 is authorized to provide cable service in the new development plus in other areas (via DSL). The construction timetable is keyed to that for the development. There is a franchise fee of 1% of gross revenues, three PEG channels, and financial support for these channels at the Township's option of up to thirty cents per customer per month.

In the negotiations with T2, Holland Township was told by the phone company that franchises were not a problem and could be obtained relatively quickly. T2 commented that it was aware that SBC and others were opposed to franchises and were likely attempting to get the law changed. They indicated that they could obtain franchises and get cable systems built and operating while the large phone companies were still arguing for a change in the law. The strategy apparently has been successful. It raises the question of why the large phone companies could not adopt a similar strategy and have their systems already built and in operation.

Zeeland Charter Township, Michigan

Zeeland Charter Township is a municipality with a population of approximately 8,000 located in the state of Michigan. It was approached in 2005 when the local independent phone company (Drenthe Telephone) which served part of the Township was bought by another nearby independent phone company. The purchaser (Allendale Telephone) wanted a cable franchise to be able to provide cable service to the customers of its newly acquired company.

Zeeland Township awarded a cable franchise to Allendale Telephone that requires it to provide service to all residences in its telephone service area in the Township. The company has three years to meet this standard. It has a franchise fee of 5% (currently at the Township's option reduced to 2%) and has two PEG channels (an education channel and a combined education/government channel). At the Township's option they can receive support for these channels from Allendale Telephone of up to twenty cents per customer per month.

In terms of timing, Zeeland Township was one of the communities which had worked jointly with Allendale Township on a franchise renewal with Charter Communications, so the two Townships' cable franchises were similar. For that reason, Zeeland Township was able to take the franchise which Allendale Township had previously granted to Allendale Telephone and easily adapt it to its own situation. This took approximately two months, mainly to work out technical issues on PEG channels, specifically making sure Allendale Telephone would obtain and carry the proper two PEG channels. This was important to the Township because generally Allendale Telephone has PEG channels with programming not relevant to Zeeland Township (such as from school systems located well outside the community). What the Township wanted was for Allendale Telephone to carry the two PEG channels for Zeeland Township, which are totally different and come from different organizations from those carried by Allendale Telephone elsewhere. The Zeeland Township PEG channels carry educational programming from the local school systems, are specifically applicable to the local area and are carried by the other cable company, Charter Communications. This was a problem for Allendale Telephone because its service area did not extend to the studios where the programming for the Zeeland Township PEG channels originates. The Township worked with Allendale Telephone to

demonstrate how it could obtain the feeds for the channels by microwave link, and in the franchise provided it with time to obtain the feeds.

One of the significant items the Township (and other Municipalities) has noticed in dealing with cable franchising with telephone companies is the lack of knowledge of municipal law and procedures by telephone companies. For example, they seem to have the impression that a franchise can be negotiated and signed by the Township Supervisor (the Township equivalent to Mayor) acting on his/her own. In fact because franchises are long-term agreements (typically 15 years) that can have a significant impact on the community, Michigan law for townships such as Zeeland requires that they be reviewed and considered at two successive board meetings (the laws for other types of municipalities often are similar for the same reasons). This affords the public ample opportunity to participate and comment as well as doing the same for Township Board members. Only after such approval can the franchise be executed by the Township.

Procedural requirements such as the preceding are common with government bodies. For example, this Commission acts by a vote of its Commissioners and has a variety of procedural and due process requirements. Actions cannot be simply undertaken unilaterally by the Chairman to approve a license or rule. The same is true at the municipal level.

Ada Township, Michigan

Ada Township is a Township in the Grand Rapids Michigan metropolitan area with a population of approximately 10,000.

In recent decades cable franchises and their renewals have been negotiated jointly by all of the municipalities in the Grand Rapids metropolitan area. Although there is no formal

"group" the municipalities generally retain the same attorney or consultant to represent them, split the cost and generally recommend the resulting agreement negotiated at the staff level to their respective legislative bodies (such as city commissions or township boards). To date these recommendations have always been accepted. This process has allowed both potential new cable companies and the incumbent to quickly get one generally uniform form of franchise for the entire metropolitan area, while making sure each franchise is tailored to meet the unique needs of each specific municipality.

In this regard, Ada and the other Grand Rapids area communities have twice been approached by new cable companies. The first company was 21st Century Cable. Ada and other communities worked jointly to come up with a form of franchise for 21st Century that would allow it to quickly provide service throughout the metropolitan area. Unfortunately, part way through negotiations, 21st Century encountered financial problems and terminated negotiations.

A few years later, the communities were approached by Everest Communications, which wanted to offer video, phone, and Internet service. Again, in a few months a franchise was negotiated, and in 2000, Ada Township and the other communities in the area approved a franchise agreement with Everest, along with the related local approvals required for phone companies under Michigan law. The franchise with Everest required service in Ada Township wherever there were thirty (30) homes per mile, and in denser communities required service to all residents. Everest was given five years to build out the entire metropolitan area. There was a franchise fee of 5% of gross revenues, and five (5) PEG channels so as to accommodate the five (5) PEG channels currently present in the Grand Rapids metropolitan area. Financial support for these channels was \$10,000 initially and thereafter two dollars (\$2) per customer per year. But

Everest, too, encountered financial problems, never built a cable or phone system and ultimately in 2004, by mutual agreement, the franchise was rescinded.

While Ada and the other communities were negotiating franchises with both 21st Century Cable and with Everest, the franchise with the incumbent cable operator (then AT&T, now Comcast) was in renewal. Ada and the Grand Rapids communities were thus careful in their negotiations with the two potential competing cable companies to make sure the terms and conditions they obtained would meet their communities' future cable-related needs so as to meet the requirements for renewal under the Federal Cable Act. This approach proved worthwhile as ultimately the communities renewed their franchises with Comcast in 2001 on terms similar to those previously negotiated with Everest.

City of Westland, Michigan

The City of Westland has a population of approximately 86,000 people and is located in the Metropolitan Detroit area.

Westland first issued a cable franchise to Continental Cablevision in 1984 after going through a request for proposal process. In 1997, as this franchise was expiring, Ameritech New Media came to the City for a cable franchise. The franchise was negotiated and adopted in approximately five months. The franchise provided (among other things) a 5% franchise fee, three PEG channels, and grants of \$40,000 initially and 1% of gross revenues ongoing to support the PEG channels. The franchise requires service to be provided to all residents of the City. Ameritech New Media was given two and one half years to build its system so as to do so. The franchising process was facilitated because Ameritech New Media, its consultants and employees were knowledgeable about municipalities, cable and the franchising process -- their

vice president in charge of franchising was a long-time cable veteran, and one of their key consultants on franchising was the former cable director for the City of Boston. This knowledge of municipal matters and the cable industry allowed negotiations to proceed promptly.

In May of 1998, approximately six months after Westland had granted a franchise to Ameritech New Media and the cable system was under construction, Ameritech agreed to be purchased by SBC. Westland was extremely concerned that this purchase would lead to the total shutdown of Ameritech New Media and loss of cable competition in the City given SBC's track record on the West Coast (Pacific Bell) and on the East Coast (Southern New England Telephone) of shutting down the cable affiliates of telephone companies which it purchased. To prevent this from happening, among other actions, Westland's Mayor traveled to Washington to meet with officials of the FCC and the City contacted Congressman John Dingell and others.

Ameritech New Media's franchise from the City contained a transfer provision that provided that there could be no change of control of Ameritech New Media without the City's consent in advance. Ultimately, the City (aided by political pressure at the national level by Congressman Dingell, Senator Mike DeWine and others) approved the transfer, but only upon getting written commitments by Ameritech Corporation that Ameritech New Media would continue in operation and not be shut down. SBC's attempts to get the transfer approved without such a written commitment that Ameritech New Media would continue in operation were unsuccessful.

A few years later, SBC sold off Ameritech New Media (the company is now known as Wide Open West). It is ironic that SBC, which fought so hard to be able to shut down Ameritech New Media and ultimately spun it off, now appears to regret its actions and wants to get into the cable business and obtain the types of cable franchises which it sold off five years ago.

At the time that the City was granting a franchise to Ameritech New Media, it was within the 36-month renewal period with Continental Cablevision/Media One, the original franchisee. In negotiating the terms of the franchise with Ameritech New Media, the City was very aware of the pending renewal and negotiated carefully to ensure that the franchise with Ameritech New Media would meet the City's future cable-related needs. This was because Continental Cablevision/Media One would (and did) argue that the City Council's approval of the franchise with Ameritech New Media determined what the City's cable-related needs were. Thus to preserve the integrity of the statutory renewal process prescribed by Congress under Section 626 of the Cable Act and ensure that it and its residents needs were met, the City was very attuned to its future cable related needs in negotiating the franchise with Ameritech New Media. The franchise with Continental Cablevision/Media One was subsequently renewed on terms similar to those in the Ameritech New Media franchise.

Respectfully submitted,

By: John W. Pestle
Timothy J. Lundgren
VARNUM, RIDDERING, SCHMIDT & HOWLETT LLP
333 Bridge Street N.W.
Grand Rapids, MI 49504
(616) 336-6000

Attorneys for:

PENNSYLVANIA AND MICHIGAN MUNICIPALITIES

#1218257_1